

REMARKS

Applicant intends this response to be a complete response to the Examiner's **13 February 2006** Non-Final Office Action. Applicant has labeled the paragraphs in his response to correspond to the paragraph labeling in the Office Action for the convenience of the Examiner.

Claim Rejections under 35 U.S.C. 112:

Claims 8, 21 and 33 stand rejected under 35 U.S.C. 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

While applicant may disagree, it amends claims 8, 21 and 33 to recite two such services, namely one or both of formulary management services and drug utilization review services as described in the specification. Accordingly, Applicant requests that Examiner's rejection be withdrawn.

Claim Rejections under 35 USC 103(a):

Claims 1-2, 4-12, 14-22, 24-27, 29-34 and 36-38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over McEvoy (US 6,496,804) in view of Humphrey (US 6,634,481).

Applicant has carefully considered the examiner's objection and, in particular, the examiner's conclusions regarding the teachings of the cited references. Respectfully, Applicant disagrees with these conclusions and requests re-consideration.

Firstly, Applicant draws the Examiner's attention to paragraph [0094] of its applications. The physical form of the token is not akin to the mechanical token of Humphrey which mechanical token operates a mechanical dispensing device for obtaining the product. Applicant's token (which may have a coupon like form or an electronic form or other) replaces the sample itself in sales or marketing distribution chain between a pharmaceutical company and its sales representatives, a prescriber (e.g. a doctor), and a patient. Applicant's token is presented by a receiving patient to a drug dispenser (e.g. a pharmacist) who then makes a claim for adjudication by a system for pharmacy benefit claims.

On the other hand, Humphrey's token is purchased by a customer to operate a machine at the point of purchase. The Humphrey token is not a proxy for the sample that would be otherwise distributed in a sales or marketing distribution chain to entice customers to use a particular product. Humphrey's token is given after the purchase. It is neither free nor an encouragement to use the product. As such, there is no motivation to combine any teaching of Humphrey with a teaching of

McEvoy. Humphrey ought not to form the basis of an obviousness type rejection as applied.

The Examiner further writes that McEvoy (at Col 4, Li 61 to Col 5, Li 5) discloses an a method for distributing pharmaceutical drug samples comprising the step of adjudicating a claim by a drug dispenser at claim adjudication system for pharmacy benefit claims. Applicant disagrees. McEvoy discloses no such adjudication method or system. Rather, a consumer wishing to obtain a product sample simply redeems a coupon; neither the redemption by the consumer or the payment to the retailers is adjudicated as claimed.

McEvoy at Col 4, Li 61 to Col 5, Li 5 discloses a retailer applying to a coupon redemption service to be reimbursed for the product samples that have been supplied to the consumers already. The legitimacy of the retailer's reimbursement request is then assessed. In summary, the system in McEvoy operates as follows:

- (i) In a periodical or other publication to which the Consumer has subscribed for services, the consumer receives a coupon to redeem for a product [Col 3, Li 46 – 48];
- (ii) To complete the coupon, the consumer affixes a label from the periodical to the coupon [Col 3, Li 48 - 52];
- (iii) Consumer presents the completed coupon to a Retailer for redemption [Col 3, Li 61 – 64];
- (iv) Retailer receives coupon and provides product sample [Col 3, Li 61 – 64];
- (v) Retailer applies for reimbursement sending in the physical coupon to a redemption service [Col 4, Li 66 – 67];
- (vi) Retailer's reimbursement request is assessed [Col 5, Li 1]; and,
- (vii) Retailer's reimbursement is issued [Col 5, Li 4].

The above sequence of steps makes clear that any sort of assessment that occurs, does so only after the product sample is provided. McEvoy does not teach an adjudication step for a pharmaceutical (or any) product as Applicant has described or as claimed in claim 1. It is also clear that McEvoy does not disclose a token or coupon being distributed by a prescriber as part of a drug therapy for a patient.

With respect to Humphrey, Applicant submits that it does not disclose an adjudication step as Applicant has claimed in claim 1. Accordingly, Applicant submits that the combination of McEvoy and Humphrey (which Applicant submits is improper in any event) fails to disclose Applicant's claimed invention. As such, Applicant submits that the invention as claimed in claim 1 is patentable over McEvoy in view of Humphrey and as so complies with the requirements of 35

U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw his rejection pursuant to 35 U.S.C. 103 (a).

Applicant further submits that since claims 2 to 14 depend from claim 1, examiner's rejection pursuant to 35 U.S.C. 103(a) be withdrawn for the foregoing reasons.

The Examiner appears to conclude that the coupon redemption processing of McEvoy is electronic or performed over a communication network. McEvoy does not describe such a system. Rather the physical coupons are received from the retailers and reviewed. Applicant's electronic processing of a claim integrated to a pharmacy benefits claim adjudication system is neither shown or suggested by McEvoy.

Claim 15

With respect to claim 15, Applicant submits that the foregoing reasons apply equally. As such, Applicant submits that the invention as claimed in claim 15 is patentable over McEvoy in view of Humphrey and as so complies with the requirements of 35 U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw his rejection pursuant to 35 U.S.C. 103 (a).

Applicant further submits that since claims 16 to 24 depend from claim 15, examiner's rejection pursuant to 35 U.S.C. 103(a) be withdrawn for the foregoing reasons.

Claim 25

with respect to claim 25, Applicant submits that the foregoing reasons apply equally. As such, Applicant submits that the invention as claimed in claim 25 is patentable over McEvoy in view of Humphrey and as so complies with the requirements of 35 U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw his rejection pursuant to 35 U.S.C. 103 (a).

Applicant further submits that since claim 26 depends from claim 25, examiner's rejection pursuant to 35 U.S.C. 103(a) be withdrawn for the foregoing reasons.

Claim 27

With respect to claim 27, Applicant submits that the foregoing reasons apply equally. As such, Applicant submits that the invention as claimed in claim 27 is patentable over McEvoy in view of Humphrey and as so complies with the requirements of 35 U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw his rejection pursuant to 35 U.S.C. 103 (a).

Applicant further submits that since claims 26 to 33 depend from claim 27, examiner's rejection pursuant to 35 U.S.C. 103(a) be withdrawn for the foregoing reasons.

Claim 34

With respect to claim 34, Applicant submits that the foregoing reasons apply equally. As

such, Applicant submits that the invention as claimed in claim 34 is patentable over McEvoy in view of Humphrey and as so complies with the requirements of 35 U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw his rejection pursuant to 35 U.S.C. 103 (a).

Applicant further submits that since claims 35 to 36 depend from claim 34, examiner's rejection pursuant to 35 U.S.C. 103(a) be withdrawn for the foregoing reasons.

Claim 37

With respect to claim 37, Applicant submits that the foregoing reasons apply equally. As such, Applicant submits that the invention as claimed in claim 37 is patentable over McEvoy in view of Humphrey and as so complies with the requirements of 35 U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw his rejection pursuant to 35 U.S.C. 103 (a).

Applicant further submits that since claim 38 depends from claim 37, examiner's rejection pursuant to 35 U.S.C. 103(a) be withdrawn for the foregoing reasons.

Further rejections under 35 USC 103(a):

Claim 3

Examiner also rejects claim 3 as unpatentable over McEvoy in view of Humphrey and in further view of Gillings (US 5,666,490). Applicant submits that the foregoing reasons apply equally to claim 3. The combination of McEvoy, Humphrey and Gillings fails to disclose Applicant's claimed system. As such, Applicant submits that the invention as claimed in claim 3 complies with the requirements of 35 U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw his rejection pursuant to 35 U.S.C. 103 (a).

Gillings is relied upon to provide a protocol for the electronic processing of pharmacy benefit claims. Applicant notes that Gillings relates to pharmaceutical clinical trials and in that context, the word protocol has a specific meaning well known to persons of skill in the art. Within the system of Gillings, a protocol corresponds to a single clinical trial or study. See Col. 5, lines 2-30. The term has nothing to do with electronic processing when used in the Gilling context and definitely nothing to do with communication protocols for the electronic processing of pharmacy benefit claims. Moreover, there is no motivation to combine Gillings with McEvoy and/or Humphrey.

Claims 23, 28 and 35

With respect to claims 23, 28 and 35, Applicant submits that the foregoing reasons apply equally. As such, Applicant submits that the invention as claimed in claim 23, 28 and 35 complies with the requirements of 35 U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw

his rejection pursuant to 35 U.S.C. 103 (a).

Claim 13

Examiner also rejects claim 13 as unpatentable over McEvoy in view of Humphrey. Applicant submits that the foregoing reasons apply equally to claim 13. As such, Applicant submits that the invention as claimed in claim 13 is patentable over McEvoy in view of Humphrey and as so complies with the requirements of 35 U.S.C. 103(a). Therefore, Applicant requests that examiner withdraw his rejection pursuant to 35 U.S.C. 103 (a).

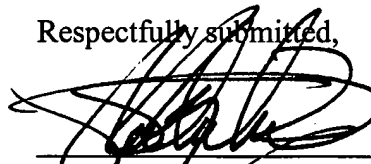
Summary

In sum, Applicant submits that the Examiner's cited art neither alone, nor in combination, disclose the Applicant's invention as presently claimed. For all of the reasons set out above, Applicant respectfully submits that the application in its present form is in condition for allowance and action toward that goal is respectfully requested.

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Robert W. Strozier at 713.977.7000

Date: **06/13/2006**

Respectfully submitted,



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